

September 30, 1992 levels), the system should be permitted to adjust its rates after the freeze period in order to compensate not only for inflation but also for increases in other exogenous costs since September 30, 1992.

The Commission's price-cap system allows systems with rates above the benchmarks to adjust the benchmarks upwards (toward existing prices) based on inflation from September 30, 1992, to the date of regulation. But the Commission does not permit these systems to adjust for increases in exogenous costs during that period. Because the Commission recognizes the reasonableness of adjusting for exogenous costs after regulation begins, it is wholly irrational not to recognize increases in these costs since September 30, 1992.

Moreover, the price-cap system does not permit cable operators whose rates are currently below the benchmarks to adjust their rates at all for either inflation or exogenous cost increases occurring between September 30, 1992, and the date of regulation. Plainly, this is irrational and unfairly penalizes those systems with low rates.

3. Streamlined Cost-of-Service Analysis Should Be Permitted for Small Systems

The Coalition of Small System Operators plans to file comments on the Further Notice of Proposed Rulemaking to be released by the Commission with respect to cost-of-service procedures. Therefore, we will not address cost-of-service procedures here, except to state that a streamlined form of cost-of-service analysis will serve as the third level of the rate analysis for small systems, following (i) analysis of net income to determine if the system has per se Reasonable Net Income (in which case the system's rates are automatically deemed to be reasonable); and (ii) analysis of rates under the proposed, revised benchmarks, as adjusted for density where appropriate.

III. THE FCC SHOULD PERMIT MORE PASS-THROUGHS FOR EXOGENOUS COSTS.

In order to reduce the administrative burdens imposed by rate regulation on small systems, the Commission should permit the pass-through of additional exogenous costs under the benchmark regulatory scheme. Otherwise, these costs will eventually force virtually all systems into making cost-of-service showings. Even though standards have not yet been developed for the cost-of-service procedure, there is no question that such procedures will demand much more research, analysis and preparation -- at the system level, the franchise level, and the FCC level -- than making pass-through adjustments to price-cap rates. Moreover, there is no reason not to permit the pass-through of costs over which a system has no control. Again, such costs would clearly be permitted to be recovered under cost-of-service procedures, but because these costs are independently established and outside the control of the system, there should not be any question regarding the system's right to recover them. Accordingly, it is appropriate to permit these costs to be recovered pursuant to a direct pass-through procedure rather than a full-blown cost-of-service proceeding, which should be reserved for cases where the amount of or right to recover a particular cost is controversial.

In determining which costs should be permitted to be passed through, the Commission should take care not to provide disincentives for the addition of channels or the improvement of programming. Specifically, systems with rates below the benchmarks should not be discouraged from adding new channels by the new regulatory structure. And yet, as it is currently configured, the Commission's benchmark/price-cap structure would punish those systems adding channels or improving programming in certain instances. For example, for systems with below-benchmark rates as of April 5, 1993, it is unclear whether programming costs associated with the addition of channels would be permissible pass-through items.

If a system with rates currently above the benchmarks adds a satellite channel, the overall rate permitted under the benchmark is adjusted slightly upward by the addition. ^{9/} But if a system with rates already below the benchmarks adds a channel, there is no apparent mechanism to pass through any of the costs of the new channel, including programming expenses. The Commission should clarify that the addition of channels qualifies as an "increase" in programming costs that may be passed through to subscribers.

In addition, other costs associated with adding channels must be included as pass-through items in order for the rules not to discourage the expansion of programming options. For example, headend costs and costs for improving the distribution plant required by the addition of channels must be treated as pass-through items. These costs can be substantial, especially for small systems with hundreds of headends, each serving only a few subscribers. One Small System Operator, serving approximately 304,734 subscribers from 416 headends, estimates that the cost of adding a single channel of programming throughout all of its systems would be about \$748,000, or \$2.45 per subscriber. By contrast, the operator estimates that adding the same channel to an urban system serving 304,000 subscribers would cost about \$.05 per subscriber, due mainly to much lower headend and distribution plant costs. Thus, if small systems are unable to pass through these substantial costs stemming from the addition of channels, it would greatly impede their ability to add channels and to improve programming.

The need for small systems to increase the amount of programming choice is especially critical as direct broadcast satellite distributions ready for

^{9/} That upward adjustment, however, generally is not enough to cover the full cost of the programming. Even systems which are above benchmarks should be permitted to pass through all of the programming cost after the freeze is over.

launch. Small systems tend to have many fewer channels today than do larger suburban and urban systems. ^{10/} Thus, small systems face a greater need to expand channel capacity. Small systems' ability to pass through these costs is made even more critical at this time by must-carry requirements, which are forcing many small systems to increase their channel capacity. Yet under the Commission's price cap system, none of the costs of expanding the amount of programming offered by a cable system may apparently be passed through. Unless the Commission seeks the eradication of small systems, their costs of increasing programming selection must be permitted to be passed through.

IV. IT IS IMPERMISSIBLE FOR THE FCC TO THREATEN TO PUNISH SYSTEMS SEEKING TO JUSTIFY RATES BASED ON COST-OF-SERVICE PROCEDURES.

The FCC cannot offer the cost-of-service alternative as a constitutional escape valve on the one hand while threatening to punish those who use it on the other hand. Moreover, the threat to use the results of cost-of-service procedures to reduce rates to below-benchmark levels undermines the whole benchmark scheme of regulation. The Commission will adopt rate benchmarks in this proceeding which, for better or for worse, will be deemed by the FCC to represent per se reasonable rates. To then second-guess the reasonableness of the benchmark rates based on information submitted by a system in a cost-of-service proceeding would call into question the concept that all benchmark rates are per se reasonable. This is particularly troubling in view of the FCC's decision to establish benchmarks based on historical pricing, and not based on cost. Cost data was not even solicited from systems in the FCC's rate survey. The failure of the FCC even to solicit cost

^{10/} The FCC's random sample of systems shows that the average system with more than 1,000 subscribers has 33.3 channels of programming, while the average small system has only 20.2 channels of programming.

data belies its concern that prices should be based on costs. Indeed, this lack of interest in cost-based data exposes the FCC's statement that it would reduce rates to below-benchmark levels -- if a cost-of-service procedure fails to justify the benchmark rate -- as a threat of punitive action, designed to discourage the pursuit of cost-of-service procedures. If the FCC were truly motivated by a concern that pricing be based on costs, it would have solicited cost data rather than pricing data in its rate surveys.

In order to preserve the viability of cost-of-service procedures as a constitutional safety valve, and to preserve the validity of the per se reasonable benchmark rates, the Commission must not threaten to reduce rates to below-benchmark levels based on the outcome of a cost-of-service procedure.

CONCLUSION

In view of the unique costs and administrative burdens faced by small systems (with less than 1,000 subscribers), the Coalition of Small System Operators hereby requests that the Commission adopt a simplified regulatory scheme for small systems. Under this scheme, small systems would be deemed to have reasonable rates if their net income is below a certain level (determined as a percentage of gross revenues). Small systems with net income above that level could undertake a benchmark analysis, with adjustments to rates for systems with density of less than 30 homes passed per mile. Finally, small systems would have the option to pursue a cost-of-service analysis using streamlined methods to be set forth in the Commission's Rulemaking with respect to cost-of-service issues.

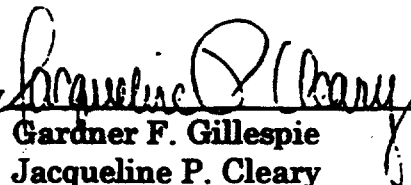
Small system operators have provided valuable service to the public by building cable plant in areas where large MSO's have refused to operate. Generally, the small-town councils, mayors and other governing bodies have recognized the services being provided by the small operators and appreciate the

risks undertaken by the small entrepreneurs building these rural systems, often agreeing to higher rates than average so that their towns will have access to cable television. Federal intervention now threatens to interfere with those arrangements on which many small operators relied when they brought cable service to sparsely populated areas.

The Commission has recently suggested in various forums that it desires to reduce the administrative burdens on small systems. We believe that this Petition for Reconsideration spells out in detail reasonable ways for the Commission to do so. We also believe that it is beyond question that the Commission's rate regulation rules, as promulgated, do not meet the statutory solicitude for small systems. The Commission has an opportunity now, before the stay is concluded, to meet its obligations under the 1992 Cable Act. We respectfully request that it do so.

Respectfully submitted,

COALITION OF SMALL SYSTEM
OPERATORS

By 
Gardner F. Gillespie
Jacqueline P. Cleary

HOGAN & HARTSON
555 13th Street, N.W.
Washington, DC 20004
202/637-5600

Dated: June 21, 1993

NAME OF OPERATOR	TOTAL SUBS	TOTAL COMM. UNITS	TOTAL STATES SERVED	TOTAL HEADENDS	HEADENDS WITH LESS THAN 1,000 SUBS.
Douglas Communications Corp. II	103,090	494	13	437	428
Galaxy Cablevision	54,887	200	6	129	112
MW1/USA Cablesystems, Inc.	37,334	484	16	443	443
Vantage Cable Associates, L.P.	30,737	126	7	126	123
Triax Communications Corp.	326,052	1,075	16	444	361
Buford Television, Inc.	77,206	260	8	168	154
Classic Cable	29,904	78	5	73	65
Midcontinent Media, Inc.	72,502	174	4	170	162
Star Cable Associates	60,279	150	6	62	33
Leonard Communications, Inc.	61,500	226	9	125	110
Phoenix Cable, Inc.	26,900	58	8	37	25
Harman Cable Communications	32,500	29	6	22	15
ACI Management, Inc.	26,000	125	8	45	39
Frederick Cablevision	41,427	21	1	9	3
Fanch Communications	189,603	514	13	306	331
MidAmerican Cablesystems, L.P.	12,173	101	5	81	80
Schurz Communiations	56,232	9	1	3	1
Rigel Communications	10,500	31	2	31	29
Western Cabled Systems	6,758	10	1	9	7
Horizon Cablevision, Inc.	23,347	81	1	16	6
Community Communications, Co.	12,167	35	2	28	28
Balkin Cable	6,758	10	1	29	4

FOR SYSTEMS WITH FEWER THAN 1,000 SUBSCRIBERS

NAME OF OPERATOR	AVERAGE SUBS.	AVERAGE HOMES PASSED PER MILE	AVERAGE MILES PLANT	AVERAGE ACTIVATED CHANNELS	AVERAGE SUBS. PER MILE
Douglas Comm. Corp. II	191	40	8	16	24
Galaxy Cablevision	396	37	19	28	20
MW1/USA Cable Systems, Inc.	84	29	7	21	12
Vantage Cable Associates, L.P.	221	45	7.23	21	30
Triax Comm. Corp.	364	39	15	22	25
Buford Television, Inc.	322	24	29	24	11
Classic Cable	331	51	10	25	39
Midcontinent Media, Inc.	240	57	5.85	16	41
Star Cable Associates	429	28	32	26	13.4
Leonard Comm., Inc.	252	40	9.6	19.9	26
Phoenix Cable, Inc.	313	24.4	24.6	18	12.7
Harman Cable Communications	410	47	8.8	21	46.9
ACI Management, Inc.	426	21.3	42.3	25	10
Frederick Cablevision, Inc.	511	33.5	22.3	40	32.9
Fanch Communi- cations, Inc.	462	40.44	10.64	28	24.1
MidAmerican Cablesystems Limited Partnership	150	49	6.2	19.4	24.2
Schurz Communi- cations, Inc.	440	55	8	30	55
Rigel Communi- cations, Inc.	275	15	5	18	10.5
Western Cabled Systems	549	73	21.8	36.7	37
Horizon Cablevision, Inc.	507	34	26	32	20
Community Communications Co.	217	27.2	20.2	15	17
Balkin Cable	550	49	22	37	25

EXHIBIT 1

United States Senate

WASHINGTON, D.C. 20510
March 5, 1993

Mr. James H. Quello
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Dear Mr. Chairman:

As the Congressional Delegation from the state of South Dakota, we are writing relative to the implementation of the Cable Television Consumer Protection and Competition Act of 1992. When you consider the important service provided to rural areas by small cable system operators, we hope you bear in mind the particular problems of many small systems. The people of South Dakota have a special understanding of the burdens faced by small systems. Many of our constituents reside in sparsely populated areas where only small operators have been willing to offer multichannel video programming.

The rules crafted by the Commission should take into account the special danger of excessive administrative burdens on these small systems. Congress specifically recognized the danger of overburdening systems with less than 1,000 subscribers in the context of the rate regulation provisions in the 1992 Cable Act. The Commission, too, should be wary of imposing excessive administrative tasks which could stunt the growth of small systems and diminish service to rural America. There are three areas where excessive regulation of small systems is of particular concern: customer service, anti-trafficking and rate regulation.

We support the idea of customer service standards for cable systems. Nevertheless, the imposition of industry-wide standards on small systems could unfairly punish operators who have limited resources available. We therefore urge the Commission, where appropriate, to consider an exemption from Commission rules regarding certain customer service requirements for systems with fewer than 1,000 subscribers. For example, telephone answering requirements or service and installation deadlines could be unduly burdensome in situations where small systems would have great difficulty achieving the requirements without the substantial expense of purchasing equipment or hiring additional employees. Of course, franchise authorities would retain the ability to regulate all aspects of customer service practices, but we believe these decisions are best left to the local authorities who understand the special situations faced by small cable operators.

The anti-trafficking rules, and specifically the three-year holding period requirement, may also pose disproportionate problems for small systems and in some cases, could serve as a detriment to consumers. Because of their marginal operations and the economies stemming from acquiring geographically clustered systems, the Commission should consider granting systems with fewer

Mr. James H. Quello

February 19, 1993

Page two

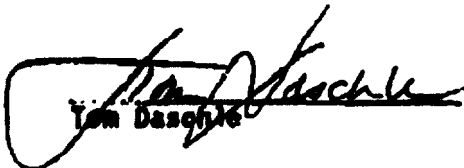
than 1,000 subscribers a waiver of the three year holding period requirement. There is little danger that trafficking in these small systems would become widespread (especially because many franchise authorities already regulate the sale of cable systems), and application of this rule to small systems could jeopardize their continued viability.

The greatest potential threat to small systems is rate regulation that does not take into consideration the unique problem faced by small systems. We encourage the Commission to consider separate rate benchmarks for systems with fewer than 1,000 subscribers. Most importantly, the Commission should recognize that small operators have limited revenue opportunities. Small system benchmarks should not unduly restrict the few revenue streams available to small systems. The Commission should also recognize in its rules that local franchise authorities are in an advantageous position to determine whether regulation of a given system's rates is warranted. If a franchise authority decides not to seek certification to regulate rates, the Commission should take into account that decision and consider leaving those rates unregulated until such time, if any, as the franchise authority requests certification.

The valuable service provided by small operators to residents of South Dakota and throughout the country should be encouraged and regulation should be tailored so as not to adversely affect the ability of rural cable systems to extend their services to sparsely populated areas. The 1992 Cable Act provides the Commission with discretion to separately regulate small systems and, where appropriate, exempt these systems from the rules or waive the rules in order to accommodate the special circumstances in which these systems operate.

Thank you for your attention to this important matter.

Sincerely,


Tom Daschle


Larry Pressler


Tim Johnson

cc: Commissioner Sherrile P. Marshall
Commissioner Andrew C. Barnett
Commissioner Ervin S. Duggan

EXHIBIT 2



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

MAR 29 1993

OFFICE OF
THE CHAIRMAN

93 APR -6 AM 6:57

Honorable Tom Daschle
United States Senate
317 Hart Senate Office Building
Washington, DC 20510

Dear Senator Daschle:

Thank you for your letter concerning the special problems and burdens that certain provisions of the Cable Television Consumer Protection and Competition Act of 1992 could cause for small cable systems. So that the Commission can be mindful of your concerns, your letter will be placed in the record of the relevant ongoing proceedings to implement the 1992 Cable Act.

Please note that our current rate regulation proceeding, MM Docket 92-266, specifically seeks comment on ways to reduce the burdens on small cable systems. See paragraphs 128-133, enclosed. I have also enclosed for your information the Notice of Proposed Rule Making and Notice of Inquiry concerning anti-trafficking. As enacted by Congress, the 1992 Cable Act does contemplate the possibility of waivers being granted. (Ron Farver, Chief of the Commission's Cable Television Branch, at (202) 632-7480, can provide additional information on the proper procedures to be used in filing such a request.)

Also note that on March 11, 1993, the Commission established federal customer service standards for cable operators, pursuant to the 1992 Cable Act. In adopting these standards, the Commission recognized the difficulties that small cable systems may encounter in meeting these requirements and, accordingly, provided for waivers in appropriate circumstances.

I trust that the foregoing and the enclosures are informative.

Sincerely,

James H. Quello
James H. Quello
Chairman

Enclosures

EXHIBIT 3

DECLARATION OF DEAN WANDRY

I, Dean Wandry, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

1. My name is Dean Wandry. I am Vice President, Operations, Fanch Communications, Inc. Fanch and its affiliates operate 290 headends in approximately 460 franchise areas in eleven states, and provide cable service to approximately 195,000 subscribers. Fanch's systems have an average of 672 subscribers.

2. Fanch operates a large number of cable systems that would be severely affected by application of the Federal Communications Commission's rate regulation benchmarks.

3. For example, Fanch operates a cable system in Greystone, Colorado. Fanch built the system in 1988-89 and currently provides 26 channels of non-premium video programming to 557 subscribers.

4. In 1992 the system had total revenues of \$207,984.

5. During the same period, the system experienced operating expenses of \$101,834. The depreciation for the system was \$62,000, and the interest expense for the system was \$34,752.

6. During 1992, therefore, the Greystone system had net income of \$9,398.

7. The FCC benchmark methodology would require Fanch to reduce the revenues from regulated services in the Greystone system by a total of \$18,744.

8. Fanch projects that for the next 12 months, it will have revenues of \$214,584, operating expenses of \$106,926, depreciation of \$62,000, interest expense of \$34,752, and a net profit of \$10,906.

9. Were Fanch to reduce its rates (and revenues) by that amount, the system would experience a net loss of \$7,838 for the next 12 months.

Cost to construct Basic Subscribers	<div> <div>\$232,000</div> <div>2002</div> </div>			
	Actual	Original	(A)	Revised
	1992	Budget	Impact of	Budget
	1992	1993	Regulation	1993
Basic and Ancillary Revenue	\$174,572	\$162,572	(\$12,744)	\$162,228
Pay Revenue	\$33,812	\$33,812	\$0	\$33,812
Total Revenues	\$207,884	\$214,584	(\$12,744)	\$198,840
Operating Expenses	\$101,834	\$106,926	\$0	\$106,926
Depreciation	\$62,000	\$62,000	\$0	\$62,000
Interest (B)	\$34,752	\$34,752	\$0	\$34,752
Net Income (Loss)	\$9,398	\$10,906	(\$12,744)	(\$7,838)

(A) Assumes regulation for the entire year of 1993

(B) Interest is allocated on the ratio of cost to construct divided by total plant and intangible costs.

10. Under the FCC's rules and other pronouncements, Fanch must decide by June 21, 1993, whether to (i) shut the system down, ceasing service to 563 subscribers; (ii) reduce rates according to the FCC's benchmark methodology to the point where revenues do not cover all of the system's expenses; (iii) retain the existing rate structure based on a cost-of-service analysis. The FCC has not yet indicated what standards will be used for a cost-of-service showing for cable systems and has threatened that an attempt to justify rates by cost-of-service could result in a requirement that rates be reduced even below the benchmark rates, with refunds back to June 21, 1993.

11. In view of this threat, and the failure of the FCC to detail how cost-of-service showings may be made, Fanch does not have enough information to make an intelligent decision.

12. If Fanch were to reduce its rates under the benchmarks, the lost revenues could never be recovered, and the inability to meet the system's expenses would require serious consideration to shutting the system off. On the other hand, although Fanch believes that any reasonable cost-of-service analysis would justify the system's existing rates (and even a substantial increase), Fanch has no assurance at this time that what it considers a reasonable cost-of-service analysis will be employed. And the FCC has indicated that cable systems (including Fanch) may be required to make a refund to

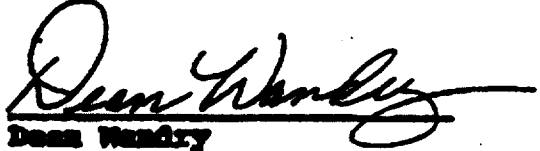
subscribers back to June 21, 1993, for any charges above those justified by the FCC's analysis. Therefore, if Fanch chooses to retain its current rates based on a cost-of-service analysis, it runs the risk that its net losses could be even higher than the losses that would be generated for the period after June 21 under the benchmarks.

13. The FCC released its 500-plus page rate regulation order on May 3, 1993. The order contains approximately 50 pages of forms and instructions. On May 13, 1993, the FCC held a videotaped, satellite-delivered public meeting in which FCC staff members spent more than an hour explaining how to fill out the benchmark forms. Since that meeting, the FCC has issued various other pronouncements concerning the benchmark system. Fanch has attempted to understand the benchmark methodology and to perform the necessary analyses for its systems.

14. At this point, Fanch has completed benchmark calculations (including equipment and installation charges) for only six systems. We expect that we will be able to complete the analysis for 30-40 systems in time to make adjustments before June 21, 1993. We will simply be unable to complete the analyses for the other 250-260 systems by that time. Eventually, according to the FCC's instructions, we must complete the benchmark analysis for each franchise area, of which Fanch has approximately 460. Even if the cost-of-service

were available, therefore, Fanch would not be able to make decisions regarding the proper rate structures for many of its franchises by June 21, 1993.

15. To illustrate the unique problems faced by small operators with numerous headends, I note that Fanch sent out 1,259 letters to broadcasters by the May 3, 1993 deadline under the new signal carriage rules. In addition, Fanch sent out 2,721 notifications to broadcasters on June 1, 1993. And, since May, Fanch has responded to 375 additional inquiries asking for clarification or additional information relating to the new signal carriage rules. Fanch has already received requests for negotiations for retransmission consent from broadcasters, and we expect to participate in more than 100 separate retransmission negotiations before October of this year.


Dean Wandy

Date: 6-11-93

10226

EXHIBIT 4

DECLARATION

I, the undersigned, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief.

Douglas Communications Corp. II ("Douglas") is the managing general partner of five limited partnerships, which, as of March 3, 1993, owned and operated cable television systems consisting of a total of approximately 468 franchises and approximately 414 headends which served approximately 102,000 subscribers. However, approximately 406 of Douglas' 414 headends were for franchises serving less than 1,000 subscribers ("Small Systems"). In fact, as of March 3, 1993, Douglas' Small Systems served an average of only 191 subscribers and provided an average of 16 activated channels. The areas served by Douglas' Small Systems have an average density of less than 41 homes passed per mile and 24 subscribers per mile with an average penetration of 60%.

Douglas continues to expend substantial time and monies in a good faith effort to understand the Federal Communications Commission's ("FCC") 500-page May 3, 1993 Report and Order, including the extensive worksheets, instructions, and forms, as well as the FCC's numerous other pronouncements implementing the 1992 Cable Television Act. Since the FCC's regulations are very complex, it has been necessary for Douglas' limited personnel to spend an inordinate amount of time aside from their normal duties to begin calculating the benchmarks prescribed by the FCC. However, since Douglas has limited personnel, who must calculate benchmarks for nearly 500 franchises, it is highly unlikely that Douglas will be able to complete benchmark calculations and adjust its rates, where necessary, for its nearly 500 franchises by June 21, 1993.

Even if Douglas were able to complete calculations of the benchmark rates for all of its franchises and implement the rate changes, it would neither have the personnel nor budget necessary to then commence and complete cost-of-service analysis for its franchises, even assuming the FCC had issued standards to conduct cost-of-service showings for small systems, by June 21, 1993.

While large cable systems may have the personnel and monies to calculate the benchmarks prescribed by the FCC and conduct cost-of-service analysis by June 21, 1993, Douglas' as a small systems operator with limited personnel and budget simply cannot complete such an undertaking by that date. The administrative burden, not to mention the costs, of understanding the FCC's complex regulations, calculating benchmarks, and completing cost-of-service analysis, are substantial. Moreover, cost-of-service is not an acceptable alternative to the benchmarks in view of the FCC's threat that it would reduce rates to below benchmark levels if the as yet undefined cost-of-service showing does not justify existing rates. Douglas, like many other similarly situated small systems, requires

additional time to complete the calculations and conduct the analysis necessary to calculate the impact of and to comply with the FCC's regulations. The Commission should not require compliance with the benchmarks until the parameters of the cost-of-service alternative are defined.



Michael J. Pelt
Senior Vice President,
Douglas Communications Corp. II

Dated: 6/10/93

EXHIBIT 5

DECLARATION

I, William Shew, hereby declare under penalty of perjury that the following statements are true and correct:

I am Director of Economic Studies, Arthur Andersen Economic Consulting. I have engaged in numerous studies of the economics of cable systems and television markets in the United States and Europe. My curriculum vitae is attached.

I have been asked to examine the foundation of the benchmarks proposed by the FCC to regulate the prices of basic cable services, particularly as those benchmarks apply to small cable systems, defined as having fewer than 1000 subscribers. The benchmarks are intended to describe the prices that "competitive" cable television systems would charge for basic cable service packages. The FCC recognized that the prices charged by a cable system — whether it is "competitive" or not — depend on characteristics of the service it provides. The FCC's schedule of competitive benchmarks is a function of (1) the number of system subscribers, (2) the number of channels available on all regulated tiers, and (3) the number of satellite-delivered channels on all regulated tiers. The FCC plans to prohibit any "non-competitive" cable system from charging service prices higher than the benchmark prices that, according to its analysis, a "competitive" cable system would charge in the same circumstances.

My conclusions concerning the statistical validity and the soundness of the benchmarks can be summarized as follows:

1. There are inaccuracies in the FCC data used to develop the benchmarks. Determining how these inaccuracies have affected the benchmarks would be quite difficult.
2. The FCC's sample of small competitive systems is quite small, with the result that the benchmarks derived by the FCC are characterized by a significant degree of uncertainty.
3. A number of the systems used to develop "competitive" benchmarks are municipal systems or private systems engaged in price wars, whose prices would tend to understate the prices that are sustainable in long-run competition.
4. The FCC benchmark equation does not adequately predict the prices charged by small, competitive cable systems.

I will begin by summarizing how the FCC constructed its benchmarks, which is necessary to understand their infirmities. I will then explain my reservations about the benchmarks.

Benchmark Construction

To develop its competitive benchmarks, the FCC began by sending a questionnaire to systems serving 748 cable franchises, out of a total of approximately 30,000 cable franchises operating in the U.S.. Of the 748 surveyed franchises, 300 were randomly selected. The remainder consisted of at least one franchise belonging to each of the largest 100 cable systems and franchises where the FCC believed that "effective" competition was taking place. Cable systems were asked to report, for basic cable service packages they provided, how many channels and satellite-transmitted channels were supplied and the price that was charged, as of September 30, 1992. They were also